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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Reexamination of the Comparative) MM Docket No. 95-31
Standards for Noncommercial)
Educational Applicants)

To: The Commission

COMMENTS

Francis Marion University ("FMU"), an applicant for a new noncommercial FM station on Channel 213 in Florence, South Carolina (BPED-980224MB), hereby submits its comments in response to the Further Notice of Proposed Rule Making, MM Docket No. 95-31, FCC 98-269 (October 21, 1998) ("Further Notice").¹ In its Comments, FMU asks the Commission to create a dispositive preference in favor of local educational institutions.

I. INTRODUCTION

In the Further Notice the Commission examined three methods for awarding licenses to applicants for noncommercial educational ("NCE") broadcast stations: 1) traditional comparative hearings, 2) lotteries, and 3) a point based system. Rejecting traditional comparative hearings, the Commission tentatively concluded to select either a lottery or point based system. Further Notice, ¶7. FMU submits that a credit for local educational institutions should be adopted by the Commission and incorporated as a dispositive preference into whichever system the Commission decides upon.

¹ On December 3, 1998, the Commission extended the time for filing comments in this proceeding from December 14, 1998 to January 28, 1999. See, Order, MM Docket No. 95-31, DA-98-2489 (December 3, 1998).

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II. TRADITIONAL NCE CRITERIA

A preference for local educational institutions is soundly based in Commission precedent and policy. Traditionally, the Commission has held that a noncommercial licensee's most important focus is on the problems, needs, and interests of its community of license. Seattle Public Schools, 4 FCC Rcd 625, 629 ¶13 (Rev. Bd., 1989). In selecting among competing noncommercial applicants, the Commission has long looked at the manner in which the operation proposed by the applicants would meet the needs of the local community to be served. Seattle Public Schools, *supra*, at 639, ¶156; *citing Pacifica Foundation*, 21 FCC 2d 216 (Rev. Bd. 1970).

Applicants for new noncommercial broadcast stations are required to qualify as either established educational institutions, or as educational organizations. 47 CFR §73.503; Palm Bay Public Radio, Inc., 6 FCC Rcd 1772, 1773 ¶10 (1991). In the latter case, applicants were traditionally required to provide additional information, typically showing concrete plans to develop educational programming for their community of license. *Id.* FMU's proposed preference encapsulates these important policy objectives by awarding credit for *bona fide* educational institutions and, in particular, those with established connections with the local community of license.

The Commission should not abandon the traditional policy objectives it has fostered in allocating the limited spectrum reserved for noncommercial broadcasters. FMU's preference for local educational institutions effectively insures that these criteria will continue to provide the highest quality noncommercial programming for the listening public.

III. PUBLIC INTEREST BENEFITS

A local university, college or community college is uniquely connected with its surrounding community. Often, such an institution is the chief cultural catalyst in the community. As a community citizen, the educational institution directly participates in the life of the community. It must also be responsive and answerable to the community. Such a close nexus does not exist in the case of distant, nationally or regionally based organizations. Local educational institutions are preferable as licensees as a direct result of their greater knowledge and connection with the community of license.

In the Further Notice, the Commission recognized the benefits of a preference for local educational institutions in suggesting that a "Local Educational Presence" credit serve as the basis for the award of points in a point based system. Further Notice, ¶24. As the Commission observed, a school with a broadcasting curriculum might absolutely require a station in the immediate vicinity of its campus in order to meet its educational needs. Further Notice, n. 26. A preference for such a applicant would foster efficient spectrum management since scarce noncommercial spectrum would be awarded to the applicant that can only meet its educational goals within a specific geographic region, over other applicants that can operate equally well from other locations. Id. A non-local applicant can also apply in other locations where spectrum may be more readily available. Additionally, as noted by the Commission, a requirement that an educational institution be in existence for an established period of time would both help establish its need for a license at that location and reduce the potential for abuse. Id.

The Commission has recognized the many public interest benefits that arise from creating a dispositive preference for local educational institutions.

FMU submits that this preference would ensure that the NCE applicant selected would deliver the greatest service to the community.

IV. IMPLEMENTATION OF THE PREFERENCE

FMU's proposed preference can be incorporated into either a lottery or point based system. In the lottery context, a weighing system in favor of local educational institutions would address concerns raised by several commenters that the quality of public service would decline using a pure lottery approach. Further Notice, ¶11. FMU's preference would additionally serve the goal stated in the Further Notice of increasing the diversification of ownership by localizing the ownership and control of NCE facilities. Further Notice, ¶12. Significantly, the preference would avoid the constitutional problems raised in the Further Notice. Therefore, FMU submits that within the lottery context, local educational institutions be given a dispositive 2:1 preference.

In the Further Notice, the Commission pointed out that there were several difficulties attendant to weighing systems based on media diversity. Such a system could unfairly work against state education plans. Further Notice, ¶14. There would also be issues regarding who was in control of a given NCE applicant. *Id.* FMU's proposed preference does not suffer from these problems because the question of whether an institution is local can be verified without resort to subjective considerations. If an institution is local to the city of license, it would receive the preference regardless of whether it belongs to a large state education system and there would be no inquiry as to the identity of the individuals in control of the applicant. The potential for abuse, well recognized by the Commission, would be nearly nonexistent since geography would be the controlling factor.² At the same time, diversity of media would be automatically

² See Further Notice, ¶18.

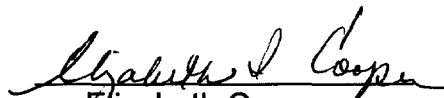
enforced simply by the fact that a given institution can only be local to one city of license. FMU's preference would accomplish the Commission's policy goals while at the same time maintaining the simplicity and efficiency of a lottery system.

In a point based system, FMU submits that a full 2 points be awarded to local educational institutions. As noted above, the Commission has already articulated the notion that local educational institutions be awarded a substantial credit. This credit reflects more efficient spectrum management, closer ties to the city of license and reduction in the possibility of abusive filings. FMU agrees with the Commission in this regard and urges the creation of a fully dispositive local educational institution credit.

V. CONCLUSION

A preference for local educational institutions would embody traditional policy reasons underlying the award of noncommercial spectrum. This preference could be incorporated into either lottery or point based systems. The public interest in quality, community based, programming would be advanced along with the goal of sound spectrum management. A local educational institution preference would bring these benefits without creating constitutional issues or injecting purely subjective elements into noncommercial applicant proceedings. There would be little, if any, area for abuse. Therefore, FMU submits that a dispositive preference be created in future noncommercial licensing proceedings for local educational institutions.

Francis Marion University


Elizabeth Cooper
Senior Vice President
for Advancement

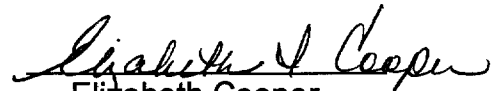
CITY OF FLORENCE)

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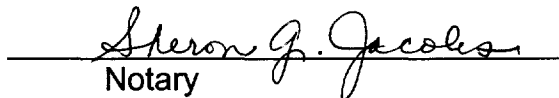
VERIFICATION

I, Elizabeth Cooper, being duly sworn, do hereby state that I am an officer of Francis Marion University, that I have read the foregoing Comments and know the contents thereof to be true to my own knowledge, information and belief.



Elizabeth Cooper
Senior Vice President
for Advancement
Francis Marion University
PO BOX 100547
Florence, South Carolina 29501

Sworn to and subscribed before me this
27th day of January, 1999.


Notary

CERTIFICATE OF SERVICE

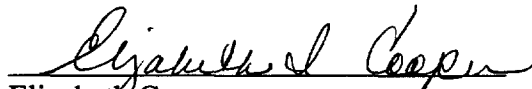
I, Elizabeth Cooper, Senior Vice President for Advancement, Francis Marion University, certify that on this 28th day of January, 1999, copies of the foregoing were mailed, postage prepaid, to the following:

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